

IX. CIA COUNTERINTELLIGENCE

A. COUNTERINTELLIGENCE: AN INTRODUCTION

1. Definition of Counterintelligence

Counterintelligence (CI) is a special form of intelligence activity, separate and distinct from other disciplines. Its purpose is to discover hostile foreign intelligence operations and destroy their effectiveness. This objective involves the protection of the United State Government against infiltration by foreign agents, as well as the control and manipulation of adversary intelligence operations. An effort is made to both discern and deceive the plans and intentions of enemy intelligence services. Defined more formally, counterintelligence is an intelligence activity dedicated to undermining the effectiveness of hostile intelligence services. Its purpose is to guard the nation against espionage, other modern forms of spying, and sabotage directed against the United States, its citizens, information, and installations, at home and abroad, by infiltrating groups engaged in these practices and by gathering, storing, and analyzing information on inimical clandestine activity.¹

In short, counterintelligence specialists wage nothing less than a secret war against antagonistic intelligence services. "In the absence of an effective U.S. counterintelligence program," notes a counterintelligence specialist, "[adversaries of democracy] function in what is largely a benign environment."²

2. The Threat

The adversaries of democracy are numerous and widespread. In the United States alone, 1,079 Soviet officials were on permanent assignment in February 1975, according to FBI figures.³ Among these, over 40 percent have been positively identified as members of the KGB or GRU, the Soviet civilian and military intelligence units. Conservative estimates for the number of unidentified intelligence officers raise the figures to over 60 percent of the Soviet representation; some defector sources have estimated that 70 percent to 80 percent of Soviet officials have some intelligence connection.⁴

Furthermore, the number of Soviets in the United States has tripled since 1960, and is still increasing.⁵ The opening of American deep-water ports to Russian ships in 1972 has given Soviet intelligence

¹ Counterintelligence may also be thought of as the knowledge needed for the protection and preservation of the military, economic, and productive strength of the United States, including the security of the Government in domestic and foreign affairs against or from espionage, sabotage, and all other similar clandestine activities designed to weaken or destroy the United States. (Report of the Commission on Government Security Washington, D.C., 1957, pp. 48-49.)

² Staff summary of interview, FBI counterintelligence specialist, 5/8/75.

³ Staff summary of interview, FBI counterintelligence specialist, 3/10/75.

⁴ FBI counterintelligence specialist (staff summary), 3/10/75.

⁵ FBI counterintelligence specialist (staff summary), 5/8/75.

services “virtually complete geographic access to the United States,” observes a counterintelligence specialist.⁶ In 1974, for example, over 200 Soviet ships with a total crew complement of 13,000 officers and men called at 40 deep-water ports in this country.

Various exchange groups provide additional opportunities for Soviet intelligence gathering within the United States. Some 4,000 Soviets entered the United States as commercial or exchange visitors in 1974. During the past decade, the FBI identified over 100 intelligence officers among the approximately 400 Soviet students who attended American universities during this period as part of an East-West student exchange program.⁷ Also, in the 14-year history of this program, more than 100 American students were the target of Soviet recruitment approaches in the USSR.

Other areas of counterintelligence concern include the sharp increase in the number of Soviet immigrants to the United States (less than 500 in 1972 compared to 4,000 in 1974); the rise in East-West commercial exchange visitors (from 641 in 1972 to 1,500 in 1974); and the growing number of Soviet bloc officials in this country (from 416 in 1960 to 798 in 1975).⁸

Foreign intelligence agents have attempted to recruit not only executive branch personnel, but also Congressional staff members. The FBI has advised the Committee that there have been instances in the past where hostile foreign intelligence officers have used the opportunity presented by overt contacts to attempt to recruit members of Congressional staffs who might have access to secret information.^{9a}

The most serious threat is from “illegal” agents who have no easily detectable contacts with their intelligence service. The problem of “illegals” is summarized by the FBI as follows:

The illegal is a highly trained specialist in espionage trade-craft. He may be a [foreign] national and/or a professional intelligence officer dispatched to the United States under a false identity. Some illegals [may be] trained in the scientific and technical field to permit easy access to sensitive areas of employment.

The detection of . . . illegals presents a most serious problem to the FBI. Once they enter the United States with either fraudulent or true documentation, their presence is obscured among the thousands of legitimate emigres entering the United States annually. Relatively undetected, they are able to maintain contact with [the foreign control] by means of secret writing, microdots, and open signals in conventional communications which are not susceptible to discovery through conventional investigative measures.^{9b}

⁶ *Ibid.*

⁷ *Ibid.*, 3/10/75.

⁸ *Ibid.*

^{9a} FBI Memorandum for the Record, 10/30/75. Such recruitment approaches have been reported to the FBI by Congressional staff members. If the FBI otherwise learns of such recruitments, its policy is to report the facts to the appropriate Members of Congress.

^{9b} FBI memorandum, “Intelligence Activities Within the United States by Foreign Governments,” 3/20/75.

In several instances the FBI accomplished this most difficult assignment by carefully designed and limited mail opening programs which, if they had been authorized by a judicial warrant, might have been entirely proper. It is most unfortunate that the FBI did not choose to seek lawful authorization for such methods.^{8c}

This brief summary of the threat facing the American counterintelligence corps in this country is troubling enough, yet it does not take into account the worldwide scope of the problem. As an FBI counterintelligence expert states, hostile foreign intelligence services

are alert for operational opportunities against the United States whether they occur within this country, abroad (in other countries) or in the home country itself. An operation might begin in the home country with recruitment of an American visitor; transfer to the United States with his return; and again, even later, might be transferred to a third country where the American agent may be met outside the normal reach of United States counterintelligence coverage. Regardless of the geographical location, the operation is still directed against the United States and can cause just as much damage from abroad as within our own borders.⁹

The espionage activities of the Soviet Union and other communist nations directed against the United States are extensive and relentless.^{9a}

To combat this threat, American counterintelligence officers have developed various sophisticated investigative techniques to (1) obtain information about foreign intelligence services, (2) protect our intelligence service, and (3) control the outcome of this subterranean struggle for intelligence supremacy. The task is difficult technically, and raises sensitive legal and ethical questions. As the CIA Deputy Director for Operations has testified, the

U.S. counterintelligence program to be both effective and in line with traditional American freedoms must steer a middle course between blanket, illegal, frivolous and unsubstantiated inquiries into the private lives of U.S. citizens and excessive restrictions which will render the Government's counterintelligence arms impotent to protect the nation from foreign penetration and covert manipulation.¹⁰

3. CI as Product: Information about "The Enemy"

Counterintelligence is both an activity and its product. The product is reliable information about all the hostile foreign intelligence services who attack the United States by stealth. To guard against hostile intelligence operations aimed at this nation, a vast amount of information is required. It is necessary to know the organizational structure of the enemy service, the key personnel, the methods of recruitment and training, and the specific operations.

This information must be gathered within the United States and in all the foreign areas to which U.S. interests extend. Within the intelli-

^{8c} Testimony of W. R. Wannall, Assistant Director, FBI, 10/21/75, p. 5; see Report on CIA and FBI Mail Opening.

⁹ FBI Counterintelligence specialist (staff summary), 3/10/75.

^{9a} See Appendix III, Soviet Intelligence Collection and Operations Against the United States.

¹⁰ William Nelson testimony, 1/28/76, p. 5.

gence service, this acquisitive activity is referred to as intelligence collection. The resulting product—pertinent information on the enemy intelligence service—is often called “raw” intelligence data. The efforts of intelligence services through the world to conceal such information from one another, through various security devices and elaborate deceptions, creates the counterintelligence specialist what James Angleton, former Chief of CIA Counterintelligence, calls a kind of “wilder-ness of mirrors.”

4. *CI as Activity: Security and Counterespionage*

As an activity, CI consists of two matching halves: security and counterespionage. *Security* is the passive or defensive, side of counterintelligence. It consists basically of establishing static defenses against all hostile and concealed acts, regardless of who carries them out.

Counterespionage (CE) is the offensive, or aggressive, side of counterintelligence. It involves the identification of a specific adversary and a knowledge of the specific operation he is conducting. Counterespionage personnel must then attempt to counter these operations by infiltrating the hostile service (called penetration) and through various forms of manipulation. Ideally, the thrust of the hostile operation is turned back against the enemy.

The security side of counterintelligence includes the screening and clearance of personnel and the development of programs to safeguard sensitive intelligence information (that is, the proper administration of security controls). The intelligence services try to defend three things: (1) their personnel, (2) their installations, and (3) their operations.

At the Central Intelligence Agency, the Office of Security is responsible for protection of personnel and installations, while actual operations are largely the preserve of the CI staff and the operating divisions. Among the defensive devices used for *information control* by intelligence agencies throughout the world are: security clearances, polygraphs, locking containers, security education, document accountability, censorship, camouflage, and codes. Devices for *physical security* include fences, lighting, general systems, alarms, badges and passes, and watchdogs. *Area control* relies on curfews, checkpoints, restricted areas, and border-frontier control.¹² Thus the security side of counterintelligence “is all that concerns perimeter defense, badges, knowing everything you have to know about your own people;” the counterespionage side “involves knowing all about intelligence services—foreign intelligence services—their people, their installations, their methods, and their operations. So that you have a completely different level of interest.”¹³ However, the Office of Security and the CI staff exchange information to assure adequate security systems.

5. *The Penetration and the Double Agent*

Several kinds of operations exist within the rubric of counterespionage. One, however, transcends all the others in importance: the penetration. A primary goal of counterintelligence is to contain the intelligence service of the enemy. To do so, it is eminently desirable to

¹² Staff summary of interview, CIA security specialist, 8/20/75.

¹³ Raymond Rocca deposition, 11/25/75, p. 19.

know his plans in advance and in detail. This admirable, but difficult, objective may be achieved through a high-level infiltration of the opposition service. As a Director of the CIA has written, "Experience has shown penetration to be the most effective response to Soviet and Bloc [intelligence] services."¹⁴

Moreover, a well-placed infiltrator in a hostile intelligence service may be better able than anyone else to determine whether one's own service has been penetrated. A former Director of the Defense Intelligence Agency (DIA) has observed that the three principal programs used by the United States to meet, neutralize, and defeat hostile intelligence penetrations are: (1) our own penetrations; (2) security screening and clearance of personnel; and (3) our efforts for safeguarding sensitive intelligence information.¹⁵ The importance of the penetration is emphasized by an experienced CIA counterespionage operative, with mixed but expressive similes: "Conducting counterespionage with penetration can be like shooting fish in a barrel;" in contrast, "conducting counterespionage without the act of penetration is like fighting in the dark."¹⁶

Methods of infiltrating the opposition service take several forms. Usually the most effective and desirable penetration is the recruitment of an agent-in-place.¹⁷ He is a citizen of an enemy nation and is already in the employ of its intelligence service. Ideally, he will be both highly placed and venal. The individual, say a KGB officer in Bonn, is approached and asked to work for the intelligence service of the United States. Various inducements—including ideology—may be used to recruit him against his own service. If the recruitment is successful, the operation may be especially worthwhile since the agent is presumably already trusted within his organization and his access to documents may be unquestioned. Jack E. Dunlap, who worked at and spied on the National Security Agency (NSA) in the 1960s, is a well-known example of a Soviet agent-in-place within the U.S. intelligence service. His handler was a Soviet Air Force attaché at the Soviet Embassy in Washington. Of course, a single penetration can be worth an intelligence gold mine, as were Kim Philby for the Soviet Union and Col. Oleg Penkovsky for the United States.

Another method of infiltration is the double agent. Double agents, however, are costly and time-consuming, and they are risky. Human lives are at stake. Double agents also normally involve pure drudgery, with few dramatic results, as new information is checked against existing files. On top of this comes the difficulty of assuring against a doublecross.

Moreover, passing credible documents can be a major problem. The operations must be made interesting to the opposition. To make fake papers plausible, the genuine article must be provided now and again. Classified documents must be cleared, and this process can be

¹⁴ Memorandum from John McCone to Chairman, President's Foreign Intelligence Advisory Board, 10/8/63.

¹⁵ The Carroll Report on the Dunlap Case, 2/12/64.

¹⁶ CIA/CI specialist, staff summary, 11/1/75.

¹⁷ CIA/CI specialist, staff summary, 10/17/75.

painstakingly slow. Also, "this means letting a lot of good stuff go to the enemy without much in return," complains a CI officer with considerable experience.¹⁸

To accomplish each of these tasks, hard work, careful planning, and considerable manpower are necessary. The extraordinary manpower requirements of the double agent operation restricted the abilities of the British to run cases during the Second World War—approximately 150 double agents for the entire period of the war and no more than about 25 at any one time.¹⁹ Moreover, their mission was eased greatly by the ability of the British to read the German cipher throughout most of the conflict.

6. *The Defector*

Almost as good as the agent-in-place and less troublesome than the whole range of double agents is the "defector with knowledge." Here the procedure consists of interrogation and validation of bona fides, as usual, but without the worrisome, ongoing requirements for a skillful mix of false and genuine documents and other logistical support. Though an agent-in-place is preferable because of the continuing useful information he can provide, often a man does not want to risk his life by staying in-place, especially where the security is sophisticated; his preference is to defect to safety. In other words, agents-in-place are harder to come by in systems like the Soviet bloc countries; defection is more likely.²⁰ In contrast, agents-in-place are more easily recruited in so-called Third World areas.

Within the United States, the interrogation of intelligence service defectors who have defected in the U.S. is primarily the responsibility of the FBI, though the CIA may have a follow-up session with the individual. Sometimes the bona fides of a defector remain disputed for many years.

CIA-recruited defectors abroad are occasionally brought to the United States and resettled. The FBI is notified and, after the CIA completes its interrogation, FBI may interrogate. CIA does not bring all defectors to the United States; only those expected to make a significant contribution. CIA generally handles resettlement not only of defectors from abroad, but also (at the request of the FBI) of defectors in the United States.

7. *The Deception*

The penetration or double agent is closely related to another important CE technique: the deception. Simply stated, the deception is an attempt to give the enemy a false impression about something, causing him to take action contrary to his own interests. Fooling the Germans into the belief that D Day landings were to be in the Pas de Calais rather than in Normandy is a classic example of a successful deception operation in World War II.²¹

¹⁸ Rocca deposition, 11/25/75, pp. 33–34.

¹⁹ Sir John Masterman, *Double Cross System of the War of 1939–45* (New Haven: Yale University Press, 1972).

²⁰ Bruce Solie, deposition, 11/25/75, pp. 26–27.

²¹ Masterman, *Double Cross System*.

Deception is related to penetration because our agents operating within foreign intelligence agencies can serve as excellent channels through which misleading information can flow to the enemy. So double agents serve both as collectors of positive intelligence and channels for deception. However, there are opportunities for deception other than our own agents; in fact, "an infinite variety" exists, according to an experienced practitioner.²³ One example: the U.S. can allow penetration of its own intelligence service, and then feed false information through him.

8. *Other CI Techniques*

Other counterespionage operations include surreptitious surveillance of various kinds (for instance, audio, mail, physical, and "optical"—that is, photography), interrogation (sometimes incommunicado as in the case of one defector), and provocation. Decoding clandestine radio transmission and letters with messages written in secret ink between the visible lines is part and parcel of the CE trade, as is trailing suspected agents, observing "dead drops" (the exchange of material, like documents or instructions, between a spy and his handler), and photographing individuals entering opposition embassies or at other locations. At the recent funeral of CIA agent Richard Welch, two Eastern European diplomats were discovered among the press corps snapping photographs of CIA intelligence officers attending the burial ceremony.²⁴ Since the focus of offensive counterintelligence is disruption of the enemy service, provocation can be an important element of CE, too. It amounts, in essence, to harassment of the opposition, such as publishing the names of his agents or sending a defector into his midst who is in reality a double agent.

9. *CI as Organization*

Security at CIA is the responsibility of the Office of Security, a division of the Deputy Director for Administration. Counterespionage policy is guided by the Counterintelligence Staff of the Operations Directorate (Clandestine Service). Besides setting policy, the CI Staff sometimes conducts its own operations, though most CI operations emanate directly from the various geographic divisions as the CI field personnel—through the practice of the counterintelligence discipline—attempt to guard against enemy manipulation of espionage and covert action operations.

Structurally, counterintelligence services are usually composed of two additional sections which support Security and Operations. They are the Research and the Liaison sections. Good research is critical to a good counterintelligence effort, and it may take several forms. It can involve the amassing of encyclopedic intelligence on individuals, including American citizens associated—wittingly or unwittingly—with hostile intelligence services. Specialists say that the hallmark of a sophisticated CI service is its collection of accurate records.²⁵ CI research personnel also produce reports on topics of interest to the specialty, including guidelines for the interrogation of defectors and current analyses on such subjects as proprietary companies used by

²³ CIA counterintelligence specialist (staff summary), 11/1/75.

²⁴ CIA counterintelligence specialist (staff summary), 1/15/76.

²⁵ 6/27/75.

²⁵ *Ibid.*, 6/27/75.

foreign intelligence services and the structure of Soviet bloc intelligence services. CI researchers also analyze defector briefs and, in the case of compromised documents, help ascertain who had access and what damage was inflicted.

Liaison with other counterintelligence services, at home and abroad, is also vital since no effective counterintelligence organization can do its job alone. The various CI units at home are particularly important, as counterintelligence—with all its intricacies and deceptions—requires coordination among agencies and sharing of records. Unlike the totally unified KGB organization, the American intelligence service is fragmented and depends upon liaison to make operations more effective. Coordination between CIA and FBI counterintelligence units is especially critical since, in theory at least, the former has foreign jurisdiction and the latter domestic, yet they must monitor the movements of foreign spies in and out of these two jurisdictions. Sometimes this coordination fails dramatically. In 1970, for example, J. Edgar Hoover of the FBI terminated formal liaison with the CIA and all the other intelligence units in the Government because of a disagreement with the CIA on a question of source disclosure (the Thomas Riha case).²⁶

Liaison with foreign intelligence services overseas can undergo strain, too. As one CI specialist has said: "There are no friendly services; there are services of friendly foreign powers."²⁷ Each service fears the other has been infiltrated by hostile agents and is reluctant to see national secrets go outside its own vaults. Nonetheless, cooperation does take place, since all intelligence services seek information and, with precautions, will take it where they can get it if it is useful.

The CIA will work with friendly services to uncover hostile intelligence operations, including illegals, directed at the government of the friendly service. For example, a CIA-recruited defector may reveal Soviet agents in a friendly foreign government. This information is shared with the friendly government, if there is proper protection of the source. Protection of the CIA source is paramount.

FBI counterespionage activities within the United States are supervised by the Counterintelligence Branch of the FBI Intelligence Division. The Branch is made up of four Sections, three of which direct field operations conducted by the Bureau's field offices. The fourth handles liaison with other agencies and supervises the FBI's Legal Attaches assigned to serve in the embassies in several foreign countries.

The formal structure for counterespionage coordination between the FBI and the military intelligence agencies was established in 1939 and embodied most recently in a "charter" for the Interdepartmental Intelligence Conference in 1964.^{27a} This formal body, chaired by the FBI Director and including the heads of the military intelligence agencies, has not played a significant decisionmaking role in recent years.

²⁶ Staff summary of interview, former FBI liaison person with CIA, 8/22/75.

²⁷ Rocca deposition, 11/25/75, p. 43.

^{27a} Confidential memorandum from President Roosevelt to Department Heads, 6/26/39; memorandum from Attorney General Kennedy to J. Edgar Hoover, Chairman, Interdepartmental Intelligence Conference, 3/5/64.

As late as 1974, some FBI officials took the position that the Bureau's counterespionage activities were not under the authority of the Attorney General, since the FBI was accountable in this area directly to the United States Intelligence Board and the National Security Council. A Justice Department committee chaired by Assistant Attorney General Henry Petersen sharply rejected this view and declared:

There can be no doubt that in the area of foreign counter-intelligence, as in all its other functions, the FBI is subject to the power and authority of the Attorney General.^{27b}

In recent years the FBI has taken steps to upgrade its counterespionage effort, which had been neglected because of the higher priority given to domestic intelligence in the late 60s and early 70s.^{27c} New career development and mid-career training programs have been instituted. FBI agents specializing in counterespionage begin their careers as criminal investigators and not as analysts; and Bureau officials stress that their role is accurate fact-finding, rather than evaluation. Nevertheless, counterespionage supervisory personnel have recently attended high-level training courses in foreign affairs and area studies outside the Bureau.^{27d}

Here, then, are the key elements of counterintelligence. Together they combine into a discipline of great importance, for the rock bottom obligation of an intelligence service is to defend the country; meeting this obligation is the very *raison d'être* of counterintelligence. The discipline also represents the most secret of secret intelligence activities—the heart of the onion. Its great importance and its ultra secrecy make counterintelligence an area of concern that cannot be ignored by policymakers and by those responsible for legislative oversight. As a review of current issues in CI attests, the discipline has several problems which demand the attention of those charged with the defense of the country and the reform of the intelligence community.

B. CURRENT ISSUES IN COUNTERINTELLIGENCE

1. *Two Philosophies*

December 1974 marked the end of an era in CIA counterintelligence. James Angleton, the Chief of Counterintelligence at the Central Intelligence Agency since 1954, retired over differences of opinion with Director William Colby on the proper approach to the practice of counterintelligence.

The new regime proved to be considerably different in its approach to counterintelligence, emphasizing a diffusion of CI responsibili-

^{27b} Report of the Petersen Committee on COINTELPRO, pp. 34-35. The committee was especially concerned that the *ad hoc* equivalent of the U.S. Intelligence Board had approved the discredited "Huston Plan" in 1970. However, the committee complied with the FBI's request that it exclude from its review of domestic COINTELPRO activities the Bureau's "extremely sensitive foreign intelligence collection techniques." (Memorandum from FBI Director Kelley to Acting Attorney General Robert Bork, 12/11/73.)

^{27c} C. D. Brennan testimony, Hearings, Vol. 2, p. 117.

^{27d} W. R. Wannall testimony, 1/21/76, pp. 18-22.

ties throughout the Operations Directorate. Presumably, this has led to an increased flow of counterintelligence information within the Agency but, at the same time, has raised questions concerning compartmentation and security.

The new Chief of CIA Counterintelligence has instituted a series of specific changes which have been studied closely by the Select Committee. The findings are of an extremely sensitive character and have been reported to the Senate and to the President in a classified form. It should be noted here that CIA counterintelligence is now emphasizing different factors than heretofore, which reflect a somewhat different philosophy than that espoused by Angleton. These differences in viewpoint raise several important questions concerning how best to protect the United States, including the proper degree of compartmentation of CI information, methods of operation, approaches to security, research priorities, extent of liaison cooperation, and emphasis on deception activities, among other things.

A high-level executive branch review of the classified issues which have surfaced in this disagreement is of considerable importance. Included in this review should be an examination of the approval process for certain counterespionage operations.

2. Interagency Relations

Equally as troubling as these issues is the problem of CIA/CI relations with other counterintelligence units in the Government. Particularly vexing have been the on-again off-again liaison ties between the Agency and the FBI.²⁸ This history has been marked by turbulence, though a strong undercurrent of cooperation has usually existed at the staff level since 1952 (when the Bureau began sending a liaison man to the CIA on a regular basis). The sources of friction between the CIA and the FBI in the early days revolved around such matters as the frequent unwillingness of the Bureau to assist the CIA within the United States or to help recruit foreign officials in this country. Pressure from the CIA on the Bureau to increase microphone coverage of foreign targets within the United States was also a "red flag" to Hoover.²⁹

A series of such disagreements punctuated the relations between the two agencies throughout the 1950s and 1960s. Several flaps arose, for example, when the CIA Domestic Operations Division attempted to recruit foreign officials within the United States and failed to advise the Bureau.³⁰

In 1966 an informal agreement was negotiated between the FBI and the CIA to regularize their "coordination." This agreement had as its "heart" that the CIA would "seek concurrence and coordination of the FBI" before engaging in clandestine activity in the United States, and that the FBI would "concur and coordinate if the proposed action does not conflict with any operation, current or planned, including active investigation [by] the FBI." Moreover, when an agent recruited by the CIA abroad arrived in the United States, the FBI would "be advised" and the two agencies would "confer regarding the handling

²⁸ Former FBI liaison person with CIA (staff summary), 8/22/75.

²⁹ *Ibid.*

³⁰ *Ibid.*

of the agent in the United States." The CIA could "continue" its "handling" of the agent for "foreign intelligence" purposes; and the FBI would also become involved where there were "internal security factors," although it was recognized that CIA might continue to "handle" the agent in the United States and provide the Bureau with "information" bearing on "internal security matters."^{30a}

Eventually, the much heralded (though actually minor) Riha incident in 1970 became "the straw that broke the camel's back."³¹ Hoover ordered the discontinuation of FBI liaison with the Central Intelligence Agency. Though informal means of communication continued between CIA and FBI staff personnel, Hoover's decision was a setback to the coordination of counterintelligence activities in the Government. Not until Hoover was gone from the Bureau did formal liaison relations begin to improve.³²

Today, most counterintelligence officers in both agencies say that coordination and communication linkages are good, though a recently retired CIA/CI officer points to "a vital need for closer integration of the CI efforts of the CIA and the FBI."³³ The most salient criticisms of FBI counterintelligence voiced at the CIA concern (1) the lack of sufficient CI manpower in the FBI; (2) occasional disputes over the bona fides of defectors; and, (3) differences of opinion on the possibility of hostile penetrations within the Government. Each of these matters also requires immediate review by the executive branch. In particular, the occasional interagency disputes over defector bona fides and differences of opinion on suspected hostile penetrations cry out for a higher level of authority in the executive branch to settle these sometimes divisive disagreements.

3. The Scope and Basis of FBI Counterintelligence

In the imperfect contemporary world where other nations have interests which conflict with those of the United States, foreign-directed clandestine intelligence activities in this country must be of constant concern to the American people. One of the original reasons for the FBI's domestic intelligence mission was that the United States needed in the late 1930s a coordinated program for investigating "persons engaged in espionage, counter-espionage or sabotage."³⁴ By mid-1939 the FBI and military intelligence had gathered a "reservoir of information concerning foreign agencies operating in the United States" with efficient "channels for the exchange of information."³⁵ There is no question that during this prewar period, foreign espionage constituted a serious threat to the security of the United States and thus supported the basic decision to conduct investigations of activities which were "not within the specific provisions of prevailing statutes"³⁶

^{30a} Testimony of former FBI liaison person with CIA, 9/22/75, pp. 52-55.

³¹ James Angleton testimony, 9/24/75, Hearings, pp. 657-58.

³² Scott Miller testimony, the Commission on CIA Activities Within the United States, 3/19/75, p. 938.

³³ Statement from Scott Miler to the Senate Select Committee, 1/28/76, pp. 32-33.

³⁴ Memorandum from J. Edgar Hoover to Attorney General Murphy, 3/16/39.

³⁵ Letter from Attorney General Murphy to President Roosevelt, 6/17/39.

³⁶ Memorandum from Hoover to Murphy, 3/16/39.

but which involved "potential" espionage, counterespionage, or sabotage.³⁷

One of the major difficulties in any attempt to base investigations of foreign espionage on the criminal statutes has been, from the outset, the restricted and sometimes contradictory scope of the laws. A recent legal analysis has observed that "the legislation is in many ways incomprehensible."³⁸ Most notably, the espionage statutes do not make it a crime simply to engage in the knowing and unauthorized transfer of classified information to foreign agents.³⁹ Moreover, the statutes do not extend to a range of privately held information, especially on scientific and technical matters, which would be valuable to a foreign power.

Hostile foreign intelligence activities include more than just looking for classified information or espionage recruits. Information of a highly technical and strategic nature (though unclassified), which is normally restricted or unavailable in other societies, is openly procurable in the United States through academic institutions, trade associations, and government offices. Intelligence officers may seek out persons who have defected to the United States, to induce them to redefect back to their home country.⁴⁰ Foreign intelligence targets in this country may include information possessed by third nations and their representatives in the United States.

Moreover, the type of activity which is most easy to detect and which may indicate possible espionage does not always satisfy the normal standard of "reasonable suspicion." As a study prepared by the Fund for the Republic stated twenty years ago:

The problems of crime detection in combatting espionage are not ordinary ones. Espionage is a crime which succeeds only by secrecy. Moreover, spies work not for themselves or privately organized crime "syndicates," but as agents of national states. Their activities are therefore likely to be carefully planned, highly organized, and carried on by techniques skillfully designed to prevent detection.⁴¹

Consequently, espionage investigations must be initiated on the basis of fragments of information, especially where there may be only an indication of a suspicious contact with a foreign agent and limited data as to the specific purposes of the contact.

In addition, prosecution is frequently not the objective of an espionage investigation. For one thing; the government may desire "to

³⁷ Directive of President Roosevelt, 6/26/39. While the FBI's responsibilities were also described at times as extending to "subversion," and the lack of outside guidance allowed for overly broad FBI investigations, the problem of spying was always paramount. See the orders of President Roosevelt and Attorney General Biddle regarding warrantless wiretapping, discussed in report on warrantless FBI Electronic Surveillance.

³⁸ Harold Edgar and Benno C. Schmidt, "The Espionage Statutes and Publication of Defense Information," *Columbia Law Review*, Vol. 53, (May, 1973) pp. 929, 934.

³⁹ *Ibid.*, p. 1084.

⁴⁰ FBI Memorandum, "Intelligence Activities Within the United States by Foreign Governments," 3/20/75.

⁴¹ Fund for the Republic, *Digest of the Public Record of Communism in the United States* (New York, 1955), p. 29.

avoid exposing its own counterespionage practices and information.”⁴² In addition, the purpose of the investigation may be to find out what a known foreign agent is looking for, both as an indication of the espionage interest of the foreign country and as a means of insuring that the agent is not on the track of vital information. Since foreign agents are replaceable, it may be a better defense not to expel them from the country or otherwise halt their activities, but rather to maintain a constant watch on their operations. This also means investigating in a more limited fashion many of the Americans with whom the foreign agent associates, in order to determine what the agent may be interested in learning from them.

In the 1930s and 1940s, another argument for going beyond the criminal statutes was that there were significant ideological and nationality factors which motivated persons to engage in espionage. As Attorney General Jackson put it in 1940, individuals were a “likely source” of law violation because they were “sympathetic with the systems or designs of foreign dictators.”⁴³ The 1946 Report of the Canadian Royal Commission made similar findings. This was the most persuasive rationale for continuing FBI intelligence investigations of Communists and Fascists, as well as German and other nationality groups, before World War II. It continued to be a substantial basis for such investigations of Communists after the war.⁴⁴

By the mid-fifties, however, the characteristics of foreign espionage had changed substantially. The decline of the Communist Party caused a shrinkage in possible recruits, with the result that Soviet intelligence reverted “more and more . . . to the old type of conventional spy.”⁴⁵ A report prepared by the Association of the Bar of the City of New York observed that it was “vital” to adjust the government’s security programs to “new conditions,” one of which was the “decline of the appeal of Communism.” The report added:

In the 1930s and 1940s the Soviet Union could rely on the support of a small but substantial group in this country who were sympathetic with its asserted aims. Now this has largely changed. . . . This has made a radical change in the type and number of persons who might be lured into Communist espionage.⁴⁶

The FBI itself believed that the Community Party had become a “potential” rather than an actual espionage danger.⁴⁷ While that

⁴² *Ibid.*

⁴³ Proceedings of the Federal-State Conference on Law Enforcement Problems of National Defense, 8/5-6/40.

⁴⁴ “A characteristic of most of the cases in which espionage for the Soviet Union has been prosecuted is that the participants seem to have been motivated by ideology. . . .” Fund for the Republic, Digest of the Public Record of Communism in the United States, p. 29.

⁴⁵ Alexander Dallin, *Soviet Espionage* (New Haven: Yale University Press, 1955), p. 510. This authoritative study of Communist espionage added that “the traditional type of nonpolitical spy has advantages over a Communist: his past evokes no suspicion.”

⁴⁶ Report of the Special Committee on the Federal Loyalty-Security Program of the Association of the Bar of the City of New York (New York: Dodd, Mead & Co., 1956), pp. 35-36.

⁴⁷ FBI Monograph, “The Communist Menace in the United States Today,” (1955), p. (iv-v.)

potential threat was still significant, in view of the Party's subservience to the Soviet Union, the counterespionage justification for sweeping investigations of persons one or two steps removed from the Party (e.g., "sympathizers" or "infiltrated" groups) lost much of its force.

Nevertheless, there continue to be hostile foreign intelligence activities which the FBI characterizes as "efforts to penetrate the American political system" or attempts "to develop an agent of influence in American politics" or efforts "to influence the U.S. policy-making structure."⁴⁸

Therefore, the monitoring of contacts between U.S. government officials and foreign officials who are likely to be carrying out the directions of a hostile foreign intelligence service is a necessary part of the FBI's investigative duties. The subject of investigation is the foreign official, and any inquiry directed towards the American official can be limited to determining the nature of the foreign official's interests. Frequently it is desirable that the American official be informed by the Bureau, especially when the contact is overt rather than furtive or clandestine. (The same is also true with respect to overt contacts with American private citizens.)⁴⁹

There are two areas of special difficulty in prescribing the FBI's proper responsibility. The first involves contacts between Members of Congress or high-level executive officials and equally high-level foreign officials. There have been instances where the FBI has had reason to believe that such contacts might involve the unauthorized disclosure of confidential information to a foreign government. Except in such rare circumstances, however, contacts of this nature need not be the subject of FBI investigation or dissemination.⁵⁰

The second difficulty involves the concept "foreign subversion," used most recently in President Ford's Executive Order defining the counterintelligence duties of the U.S. intelligence community, including the FBI.⁵¹ As noted above, the Bureau characterizes certain hostile foreign intelligence activities as attempts to develop "agents of influence in American politics." The FBI considered one of Dr. Martin Luther King's advisors to be such an "agent of influence." In this case, as with the massive investigations to uncover possible foreign "influence" on domestic protest activities, the concern for "foreign subversion" was distorted so far beyond reasonable definition that the term "subversion" should be abandoned completely. Even with the qualifier "foreign," the concept is so elastic as to be susceptible to future misuse.

Nevertheless, there remains a compelling need to investigate *all* the activities of hostile foreign intelligence services, including their efforts to recruit "agents of influence." This can be accomplished by continuing investigation of the foreign agents themselves. Where a foreign

⁴⁸ FBI Memorandum, "Intelligence Activities Within the United States by Foreign Governments," 3/20/75.

⁴⁹ Contacts made secretly or with the apparent intent to avoid detection justify more extensive investigation.

⁵⁰ Where the FBI discovers such contacts as a by-product of its investigations for other purposes, they can be noted without reference to the identity of the U.S. official in order to compile a quantitative measure of foreign activity.

⁵¹ Executive Order 11905, "United States Foreign Intelligence Activities," Sec. 2(a)(2); Sec. 4(b)(4); Sec. 4(g)(1), 2/18/76.

agent makes an overt contact with an American, a limited inquiry regarding the American is appropriate to determine the nature of the foreign agent's interests. This applies whether the agent's interest is information or "influence," and the Bureau can frequently make its inquiry known to the American. But the Bureau's objectives should be confined solely to learning more about the overall mission of the hostile service and the particular assignments of its officers, as opposed to investigating "influence" by foreign officials or agents who do not have intelligence duties and the lawful activities of Americans who are not foreign agents. There is no compelling reason for intensive investigations of U.S. officials (or private citizens) simply because they are targets of foreign "influence." The line must be tightly drawn so that FBI counter-intelligence investigations do not themselves once again intrude into the American political process, with consequences damaging not only to the rights of Americans, but also to public confidence in the Bureau. Citizen cooperation with the FBI is essential to its success in detecting and countering the threat of hostile foreign intelligence operations to the defense of the nation.

To achieve this end, the federal criminal statutes dealing with espionage should be substantially revised to take account of the contemporary counterintelligence responsibilities of the FBI. A realistic definition of foreign-directed clandestine intelligence activity would make it possible for the FBI to base its counterintelligence investigations on the firm foundation of the criminal law, rather than the shifting interpretations of terms like "subversion" in executive orders. The Committee agrees with Attorney General Edward H. Levi that:

the fact that the FBI has criminal investigative responsibilities, which must be conducted within the confines of constitutional protections strictly enforced by the courts, gives the organization an awareness of the interests of individual liberties that might be missing in an agency devoted solely to intelligence work.⁵²

C. CONCLUSIONS

1. A Subcommittee on Counterintelligence should be established within the framework of the National Security Council (NSC). Its purpose would be to monitor CI activities, authorize important counterespionage operations, and adjudicate interagency disagreements over CI policies, coordination, defector bona fides, suspected hostile penetrations, and related matters.

2. The President of the United States, in consultation with the oversight committee(s) of Congress, should undertake a top secret review of current issues in the realm of counterintelligence. This review, which should form the basis for an internal Presidential statement on national counterintelligence policy and objectives, should include close attention to the following issues: compartmentation, operations, security, research, accountability, training, internal review, deception, liaison and coordination, and manpower.

3. Congressional oversight should devote more attention to this

⁵² Levi testimony, 12/10/75, Hearings, Vol. 6, pp. 314-315.

area to help preserve the liberties of American citizens and to prod the intelligence community toward a more effective defense of the nation.

(Additional recommendations on counterintelligence, including reform of the espionage laws and legislation setting standards for activities affecting the rights of Americans, are made in the Committee's Report on Intelligence Activities and the Rights of Americans.)